

Appendix E--Principal Statutes Governing CA

1. Title 10 U.S. Code (U.S.C.) (various sections--2461-2471).

a. Section 2461. This section requires congressional notification on the decision to study a function performed by DoD civilian employees. It requires a detailed summary of performance costs that demonstrate contractor performance will result in cost savings to the Government over the life of the contract. It requires certification of the Most Efficient Organization (MEO) and requires congressional reporting regarding:

(1) The economic effect on employees if the function involves more than 75 employees

(2) The effect of contracting on the military mission of the function and the amount of accepted bid and cost of government performance together with conversion costs

(3) Requiring an annual report to Congress (commonly known as the annual CA inventory)

(4) Waiver for the congressional announcement and notification requirements for functions performed by 50 or fewer DoD civilian employees or for preferential procurement

(5) Prohibiting conversion of a function to contract to circumvent a civilian personnel ceiling

(6) Certification that all analysis is available for examination

b. Section 2462. Requires DoD to procure supplies or services from the private sector where such are available at lower cost than that which DoD can itself provide. Requires the Secretary of Defense (SECDEF) to ensure costs considered are fair and reasonable and reflect all costs such as quality assurance, technical monitoring, liability insurance, employee retirement and disability benefits and all other overhead costs.

c. Section 2463. Requires the collection and retention of cost information with respect to converting the performance of a service or function to contractor performance for the term of the contract (not to exceed 5 years) and for conversion from contractor to in-house performance.

d. Section 2464. Establishes core logistics capability and limitations on contracting these functions.

e. Section 2465. Prohibits contracting of firefighting or security-guard functions.

f. Section 2466. Limits and sets percentages for contract performance of depot-level materiel maintenance.

g. Section 2467. Requires the inclusion of retirement costs in government cost comparisons. Requires at least monthly consultation with employees and consideration of their views in developing Performance Work Statement (PWS), management study efforts, and other relevant matters. Establishes that consultation with labor organization representatives (as defined by Title 5 U.S.C. 711) satisfies the consultation requirement.

h. Section 2468. Establishes base commander's authority including the requirement to prepare an annual inventory, determine which CA's will be reviewed under OMB Circular A-76 and to conduct solicitations according to the A-76 process. Limits commanders' authority as prescribed by SECDEF regulations. Requires commanders to provide employment assistance to displaced employees. Defines a military installation.

i. Section 2469. Defines limitations on application of OMB Circular A-76 to depot-level activities.

j. Section 2470. Establishes authority for DoD depot-level activities to compete for maintenance and repair workloads of other Federal agencies.

k. Section 2471. Establishes authorities and limits of leasing excess depot-level equipment and facilities.

2. Title 16 U.S.C. 670a, Conservation/Cooperative Plan for Wildlife Conservation and Rehabilitation. With regard to the implementation and enforcement of cooperative plans agreed to under subsection (a) of this section (1) neither Office of Management and Budget Circular A-76 nor any successor circular thereto applies to the procurement of services that are necessary for that implementation and enforcement; and (2) priority shall be given to the entering into of contracts for the procurement of such implementation and enforcement services with Federal and State agencies having responsibility for the conservation or management of fish or wildlife. This statute is implemented through DODI 4715.3, Environmental Conservation Program, 3 May 1996 (NOTAL).

3. Public Law (PL) 103-226, Federal Workforce Restructuring Act (FWRA) of 1994. The FWRA requires agencies to reduce full-time equivalent positions during fiscal years 1994 through 1999. The Act authorizes agencies to offer employees incentives to retire or leave Federal employment (e.g., Variable Separation Incentive Payment (VSIP)/Variable Early Retirement Authority (VERA)).

4. Annually, the Defense Appropriations Act contains a provision that prohibits spending any funds to convert to contractor performance any function of more than 10 civilian employees without completion of an MEO and congressional announcement. A second general provision prohibits spending funds for studies that exceed 24 months for single function studies and 48 months for multi-function studies. This provision places an absolute time limit on studies. For FY99 the Appropriations Act includes the following citations:

a. Section 8014. None of the funds appropriated by this Act shall be available to convert to contractor performance an activity or function of the Department of Defense that, on or after the date of enactment of this Act, is performed by more than 10 Department of Defense civilian employees until a most efficient and cost-effective organization analysis is completed on such activity or function and certification of the analysis is made to the Committees on Appropriations of the House of Representatives and the Senate: *Provided*, That this section and subsections (a), (b), (c) of 10 U.S.C. 2461 shall not apply to a commercial or industrial type function of the Department of Defense that: (1) is included on the procurement list established pursuant to section 2 of the Act of June 25, 1938 (41 U.S.C. 47), popularly referred to as the Javits-Wagner-O'Day Act; (2) is planned to be converted to performance by a qualified nonprofit agency for the blind or by a qualified nonprofit agency for other severely handicapped individuals in accordance with that Act; or (3) is planned to be converted to performance by a qualified firm under 51 per centum Native American ownership

b. Section 8026. None of the funds appropriated by this Act shall be available to perform any cost study pursuant to the provisions of OMB Circular A-76 if the study being performed exceeds a period of 24 months after initiation of such study with respect to a single function activity or 48 months after initiation of such study for a multi-function activity.

5. Combining these legal requirements establishes the following policy contained in the body of this instruction:

a. Functions with 10 or fewer FTE: By Navy policy, these actions are announced to Congress by the Navy as a courtesy and activities should forward requests to CNO (N4) via their major claimants. After the announcement the function can be "directly

converted” per paragraph 4a above. Cost data must be reported in accordance with the requirements of this instruction.

b. Functions with 11 to 50 FTEs: As stated in paragraph 5a, above, these functions are announced to Congress as a courtesy. Activities will perform a CA study per OMB Circular A-76 to formulate an MEO and will prepare a cost comparison. Upon reaching a decision to convert a function to contract, the decision must be announced to Congress before the conversion proceeds.

c. Functions of more than 50 FTEs: As in paragraph 5b, above, except that these functions must be announced to Congress as required by Title 10 U.S.C. 2461 before the study commences.

6. In summary, although OMB Circular A-76 (NOTAL) provides several alternatives to performing formal cost comparisons, Navy activities must meet statutory reporting requirements. Navy policy meets these requirements with the formal cost comparison process as stated in this instruction.